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FEDERAL ELECTION COMMISSION

Washington, DC 20463

September 2, 1999

SENSITIVE

Benjamin L. Ginsberg, Esq.
Patton Boggs, L.L.P.
2550 M. Street N.W.
Washington, DC 20037-1350

RE: MUR 4648
New York Republican Federal Campaign
Committee and Michael Avella, as
treasurer; Jeffrey T. Buley; William D.
Powers

Dear Mr. Ginsberg:

Based on information ascertained in the normal course of carrying out its supervisory responsibilities, on June 17, 1997, the Federal Election Commission found reason to believe that the New York Republican Federal Campaign Committee and its treasurer, ("the Committee"), during the 1994 election cycle, violated 2 U.S.C. § 432(h)(1) by failing to make certain disbursements by check drawn on an account at a qualified campaign depository; and violated 2 U.S.C. § 434(b)(5)(A), (6)(B)(i) and (6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(i), (viii), and (ix), by failing to report the proper identities of recipients of disbursements of \$200 or more. Further, the Commission found reason to believe that the Committee, during the 1996 election cycle, knowingly and willfully violated 2 U.S.C. § 434(b)(5)(A), (6)(B)(i) and (6)(B)(v), and 11 C.F.R. § 104.3(b)(3)(i), (viii), and (ix), by improperly reporting the purpose of certain disbursements as "election day expenses." In addition, the Commission found reason to believe that Jeffrey T. Buley violated 2 U.S.C. § 432(h)(1) and instituted an investigation in this matter.

On December 22, 1997, the Commission informed the Committee that the available evidence suggested that the Committee had committed additional violations of 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i) during the 1994 and 1996 election cycles by failing to properly report the identities of the recipients of disbursements of over \$200. In addition, certain other findings with respect to 1994 activity appeared to apply to 1996 activity as

well. Specifically, it also appeared that the Committee violated 2 U.S.C. § 432(h)(1) during the 1996 election cycle.

On February 18, 1998, the Commission found reason to believe that William D. Powers violated 2 U.S.C. § 432(h)(1). On February 23, 1999, the Commission found reason to believe that the Committee and its treasurer knowingly and willfully violated 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b)(1), (2), by failing to keep an account of the name and address of every person to whom the Committee made a disbursement, along with the date, amount, and purpose of the disbursement, including a receipt, invoice, or canceled check for each disbursement in excess of \$200.

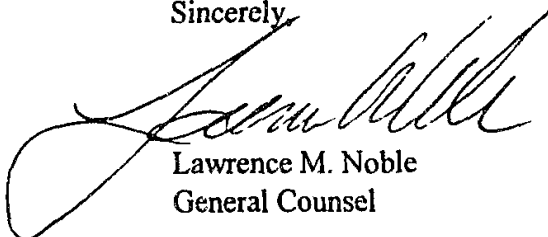
After considering all the evidence available to the Commission, the Office of the General Counsel is prepared to recommend that the Commission find probable cause to believe that knowing and willful violations of all of the above-cited laws and regulations have occurred.

The Commission may or may not approve the General Counsel's recommendations. Submitted for your review is a brief stating the position of the General Counsel on the legal and factual issues of the case. Within 15 days of your receipt of this notice, you may file with the Secretary of the Commission a brief (ten copies if possible) stating your position on the issues and replying to the brief of the General Counsel. (Three copies of such brief should also be forwarded to the Office of the General Counsel, if possible.) The General Counsel's brief and any brief which you may submit will be considered by the Commission before proceeding to a vote of whether there is probable cause to believe a violation has occurred.

If you are unable to file a responsive brief within 15 days, you may submit a written request for an extension of time. All requests for extensions of time must be submitted in writing five days prior to the due date, and good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days. A finding of probable cause to believe requires that the Office of the General Counsel attempt for a period of not less than 30, but not more than 90 days, to settle this matter through a conciliation agreement.

Should you have any questions, please contact Tony Buckley, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,



Lawrence M. Noble
General Counsel

Enclosure
Brief

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)	
)	
New York Republican Federal Campaign Committee)	MUR 4648
and Michael Avella, as treasurer; William D. Powers;)	
and Jeffrey T. Buley)	

GENERAL COUNSEL'S BRIEF

I. STATEMENT OF THE CASE

This matter was commenced by the Federal Election Commission in the normal course of carrying out its supervisory responsibilities. On June 17, 1997, the Commission found reason to believe that the New York Republican Federal Campaign Committee and its treasurer, ("the Committee"), during the 1994 election cycle, violated 2 U.S.C. § 432(h)(1) by failing to make *certain disbursements by check* drawn on an account at a qualified campaign depository; and violated 2 U.S.C. § 434(b)(5)(A), (6)(B)(i), (6)(B)(v), and 11 C.F.R. § 104.3(b)(3)(i), (viii), (ix), by failing to report the proper identities of recipients of disbursements of \$200 or more.¹ Further, the Commission found reason to believe that the Committee, during the 1996 election cycle, knowingly and willfully violated 2 U.S.C. § 434(b)(5)(A), (6)(B)(i), (6)(B)(v), and 11 C.F.R. § 104.3(b)(3)(i), (viii), (ix), by improperly reporting the purpose of certain disbursements as "election day expenses." In addition, the Commission found reason to believe that Jeffrey T. Buley violated 2 U.S.C. § 432(h)(1).

On December 22, 1997, the Commission informed the Committee that the available evidence suggested that the Committee had committed additional violations of 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i) during the 1994 and 1996 election cycles by

¹ At the time of the Commission's initial findings, Louis Bart Stone was the Committee's treasurer. Michael Avella has since replaced Mr. Stone as treasurer.

failing to properly report the identities of the recipients of disbursements of over \$200. In addition, certain other findings with respect to 1994 activity appeared to apply to 1996 activity as well. Specifically, it also appeared that the Committee violated 2 U.S.C. § 432(h)(1) during the 1996 election cycle.

On February 18, 1998, the Commission found reason to believe that William D. Powers violated 2 U.S.C. § 432(h)(1). On February 23, 1999, the Commission found reason to believe that the Committee and its treasurer knowingly and willfully violated 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b)(1), (2), by failing to keep an account of the name and address of every person to whom the Committee made a disbursement, along with the date, amount, and purpose of the disbursement, including a receipt, invoice, or canceled check for each disbursement in excess of \$200. These findings related to the \$82,500 which the Committee originally reported as having been disbursed for "election day expenses" on its 1994 and 1996 30-Day Post-General Reports.

As discussed below, the totality of the evidence shows that in both 1994 and 1996, Respondents' violations of the law were knowing and willful.

II. ANALYSIS

A. Applicable Law

Pursuant to 2 U.S.C. § 434(a)(4)(A)(iii) and 11 C.F.R. § 104.5(c)(1)(iii)(A), (B), a political committee which is not the authorized committee of a candidate must, in an election year, file a post-general election report no later than 30 days after any general election, which shall be complete as of the 20th day after the general election. Pursuant to 2 U.S.C.

§ 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i), a political committee must report the name and address of each person to whom an expenditure in excess of \$200 is made by that committee to

meet an operating expense, together with the date, amount and purpose of such operating expenditure. Likewise, pursuant to 2 U.S.C. § 434(b)(6)(B)(i) and 11 C.F.R. § 104.3(b)(3)(viii), a political committee must report the name and address of each person who receives any expenditure from that committee in connection with an expenditure under 2 U.S.C. § 441a(d), together with the date, amount and purpose of any such expenditure, as well as the name of, and office sought by, the candidate on whose behalf the expenditure is made. An expenditure is "any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office." 2 U.S.C. § 431(9)(A)(i). A political committee must also report the name and address of each person who has received a disbursement not otherwise reported, in excess of \$200, together with the date, amount and purpose of any such disbursement. 2 U.S.C. § 434(b)(6)(B)(v); 11 C.F.R. § 104.3(b)(3)(ix). "Purpose" means a brief statement or description of why the disbursement was made. 11 C.F.R. § 104.3(b)(3)(i)(A). Commission regulations expressly state that "election day expenses" is not a sufficient description for reporting the purpose of a disbursement. 11 C.F.R. § 104.3(b)(3)(i)(B).

Pursuant to 2 U.S.C. § 432(h)(1), no disbursement may be made by a political committee in any form other than by check drawn on the committee's account at its designated campaign depository, except for disbursements of \$100 or less from a petty cash fund. The treasurer of a committee and other persons may each be held liable for disbursing cash in excess of \$100 on behalf of a committee.

Pursuant to 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b)(1), (2), the Committee was also under an obligation to keep an account of the name and address of every person to whom it

made a disbursement, along with the date, amount, and purpose of the disbursement, including a receipt, invoice, or canceled check for each disbursement in excess of \$200.

“Knowing and willful” actions are those that are “taken with full knowledge of all the facts and a recognition that the action is prohibited by law.” 122 Cong. Rec. H3778 (daily ed. May 3, 1976). The knowing and willful standard requires knowledge that one is violating the law. *FEC v. John A. Dramesi for Congress Comm.*, 640 F. Supp. 985 (D.N.J. 1986). A knowing and willful violation may be established by “proof that the defendant acted deliberately and with knowledge that the representation was false.” *U.S. v. Hopkins*, 916 F.2d. 207, 214-15 (5th Cir. 1990). A knowing and willful violation may be inferred “from the defendants’ elaborate scheme for disguising” their actions and their “deliberate convey[ance of] information they knew to be false to the Federal Election Commission.” *Id.* “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214, citing *Ingram v. United States*, 360 U.S. 672, 679 (1959).

B. Facts²

1. Background

In 1993, in anticipation of that year’s New York City mayoral election, the New York Republican Party sought to implement a poll watcher program. Affidavit of Jeffrey T. Buley

² Information discussed here was obtained in various ways during the course of the investigation in this matter. First, information was provided by the Committee, and Messrs. Buley and Powers, in response to the Commission’s reason to believe findings and in response to Subpoenas to Produce Documents and Orders to Submit Written Answers issued by the Commission. Second, this Office conducted depositions of Messrs. Buley and Powers. Finally, information was obtained through discovery requests issued to non-respondent third parties.

("Buley Affidavit") at ¶7.³ Such a program is permitted by New York State Law. 5 N.Y. ELEC. LAW § 8-500. In order to make the program effective, the State Party determined to pay the poll watchers to cover expenses such as transportation, food and day care. Buley Affidavit at ¶8.

The Party's poll watcher effort was described in a December 6, 1993 newspaper article. William Bunch, *Ballot Bedfellows; 'Street money' can paper way to City Hall*, NEWSDAY, December 6, 1993 at 3. The article noted that the New York State Republican Committee, as a part of its "Victory '93" program, paid out \$65,000 "for election day activities - much of it to hire black and Latino poll watchers to work in minority neighborhoods." *Id.* The article went on to describe specific payments by the New York State Republican Committee to groups such as the New Era Political Action Committee and the Central Brooklyn Republican Club. *Id.* The State Committee's reports filed with the New York State Board of Elections itemize disbursements to these and other entities. See State of New York, Board of Elections, 27-Day Post-General Report of the New York Republican State Committee dated November 29, 1993 at Schedule 5E. Likewise, the Committee's bank statements for its Victory '93 account show checks cashed which correspond to the amounts reported as being paid to these entities. NY Republican State Committee, Victory '93, Bank Account Statement from Key Bank of New York dated November 5, 1993. Thus, in carrying out its pollwatcher program in 1993, it appears that the Party issued checks to persons in Brooklyn, New York who cashed these checks and subsequently disbursed cash to pollwatchers.

³ Pursuant to 2 U.S.C. § 431(16), a political party is "an association, committee or organization which nominates a candidate for election to any Federal office whose name appears on the election ballot as the candidate of such association, committee or organization." The State committee of a political party is responsible for the day-to-day operation of such political party at the State level. Thus, the New York Republican Party, which is also known as the New York Republican State Committee, is the State committee of the national Republican Party in New York. To finance activities which affect Federal elections, the New York Republican Party set up an account, the New York Republican Federal Campaign Committee, which is one of the Respondents in this matter.

2. Activity at Issue

a. 1994

On November 5 and 7, 1994, the Committee issued checks of \$5,000 each to Luther Mook and the Kings County Republican Committee, respectively. Also on November 7, 1994, the Committee issued checks of \$15,000 each to Jeffrey T. Buley and David R. Dudley, and of \$10,000 each to Mary F. Obwald and Gregory V. Serio. All of the checks, totaling \$60,000, were drawn on a Committee account at Key Bank. The latter four checks, totaling \$50,000, were issued at the Committee's headquarters in Albany, New York. Checks were made out to these four individuals because they were at the Party's Albany headquarters on that day. Buley Deposition at 17. On that same date, Messrs. Buley, Dudley and Serio, and Ms. Obwald, proceeded to a Key Bank branch close to the Committee's headquarters and cashed their checks. Buley Affidavit at ¶17; Buley Deposition at 21-22. Immediately following these transactions, Messrs. Dudley and Serio, and Ms. Obwald, each turned their cash over to Mr. Buley, giving him \$50,000 in cash. Mr. Buley Deposition at 23. Mr. Buley then proceeded with the cash to New York City. *Id.* at 25. Upon his arrival in New York City, Mr. Buley met with William D. Powers, the Chairman of the New York Republican Party, at the Party's headquarters and gave all of the cash to him. *Id.* at 25-27.⁴ According to Buley, "[t]o the best of my knowledge and belief, and pursuant to my directions, all the money was disbursed to the approximately 10,000 volunteers." Buley Affidavit at ¶17.

⁴ There was some confusion as to whether the headquarters in question was the Party's normal offices in New York City, or whether it was the special headquarters established in a hotel specifically for the general election. The actual location of these headquarters is not germane to the discussion of the issues in this Brief.

After obtaining the cash from Mr. Buley, Mr. Powers distributed cash to volunteers who came to the headquarters. Powers Deposition at 14. He believes that there were several dozen of them. *Id.* at 15. Money was disbursed in amounts ranging from a couple of hundred dollars to a couple of thousand dollars. *Id.* Mr. Powers did not have a list of people to whom he disbursed money, nor were any records kept of the individuals to whom he disbursed money. *Id.* No receipts were obtained from individuals who received money. *Id.* Mr. Powers understood that the individuals to whom he disbursed funds were later to distribute it to others. *Id.* at 19. Mr. Powers did not know to whom the money was ultimately to be distributed. *Id.*; *see also* Response of William D. Powers to Order to Submit Written Answers ("Powers Response").

Luther Mook disbursed the proceeds from the check issued to him. Mr. Mook has stated that he disbursed the proceeds from the check to approximately 55 persons, but that in no case did he distribute more than \$100 to any person. Response of Luther Mook to Order to Submit Written Answers at 2.

A copy of the check issued to the KCRC shows that Arthur Bramwell, the Chairman of the KCRC, cashed that check. Mr. Bramwell admits that he disbursed the proceeds of that check. Arthur Bramwell Response to Order to Submit Written Answers. Mr. Bramwell has stated that he "bought food which we made and distributed to our volunteers and other election officials on Election Day as they worked the polls or our turnout efforts. We did this for both coffee and donuts in the morning and fried chicken box lunches later in the day. We fed at least 200 people. . . ." *Id.* Mr. Bramwell goes on to describe other uses for the money. *Id.* He states that he did not give any individual \$100 or more. *Id.*

The Committee filed its 1994 30-Day Post-General Report on December 12, 1994. For the \$60,000 described above, the Committee reported disbursements of \$15,000 each to

Jeffrey T. Buley and David R. Dudley, and of \$10,000 each to Mary F. Obwald and Gregory V. Serio, all on November 7, 1994. The address given for each of these individuals on the Committee's report was in or around the Albany, New York area. The Committee also reported disbursements of \$5,000 each to one person and one organization in Brooklyn, NY: Luther Mook on November 5, 1994 and the Kings County Republican Committee ("KCRC") on November 7, 1994.⁵ In addition, the Committee reported their purpose as "election day expenses" and the category checked for each was "ADMINISTRATIVE/VOTER DRIVE."⁶

On March 22, 1995, the Commission's Reports Analysis Division ("RAD") sent a Request for Additional Information ("RFAI") to the Committee, specifically citing the itemization of certain disbursements as being for "election day expenses." The RFAI referred the Committee to 11 C.F.R. § 104.3(b)(3) and asked that the Committee clarify the description of the purpose for the apparent disbursements. On April 24, 1995, the Committee filed an amended 1994 30-Day Post-General Report, on which it changed the purpose for the disbursements that it had reported as having been made to Jeffrey T. Buley, David R. Dudley, Mary F. Obwald, Gregory V. Serio, Luther Mook and the KCRC. For each of these entries, the Committee now explained the purpose of the disbursements as "GOTV - Travel Expense Reimbursement and Catering Costs."

b. 1996

On October 31 and November 1, 1996, the Committee issued checks totaling \$22,500 which were made out to eight individuals, J. Brendan Quinn, Mary Obwald, Jason Powers,

⁵ The Committee initially reported the date of the disbursement to the KCRC as November 9, 1994, the day after the 1994 general election, but subsequently revised the date to show November 7, 1994. The Committee's initial failure to properly report the date of this disbursement is not germane to the discussion of the issues in this Brief.

⁶ These six entries appeared on the report's Joint Federal/Non-Federal Activity Schedule, the Schedule H4.

Kenneth Dippel, Lisa Herbst Ruggles, Darryl Fox, William Powers and Jeffrey Buley, in amounts of either \$2,500 or \$3,000. As in 1994, checks were made out to these individuals because these individuals were at the Committee's headquarters in Albany when the transaction was to be conducted. *Buley Deposition at 37. Mr. Buley himself signed the checks on behalf of the Committee. Id. at 38. The individuals other than Mr. Buley, but including Mr. Powers, endorsed their checks and returned them to Mr. Buley. Buley Affidavit at ¶22. Mr. Buley then cashed the checks at a Schenectady bank and proceeded to New York City with the \$22,500 in cash. Id.*

Upon his arrival in New York City, Mr. Buley turned the cash over to Mr. Powers. *Buley Deposition at 42. Mr. Buley did not know to whom Mr. Powers was to give the money. Id. at 43-44. Mr. Buley understood that the money was to be given to intermediaries, who would then pass the money on to the poll watchers. Id. at 43.*

As in 1994, Mr. Powers distributed cash to persons who showed up at headquarters. Powers Deposition at 24-25. Again, no record was kept of those people to whom Mr. Powers gave cash, nor did Mr. Powers have a list of people to whom he expected to give cash. *Id. at 26. Mr. Powers did not have a prior understanding of who would be coming to get cash from him. Id. at 27-28. Mr. Powers gave cash to people simply because they told him they were supposed to get cash from him. Id. at 30. Mr. Powers gave cash in amounts over \$200 to dozens of people. Id. at 26.*

The Committee's 1996 30-Day Post-General Report was filed with the Commission on December 4, 1996. The Committee reported apparent disbursements totaling \$22,500 in amounts of either \$2,500 or \$3,000 to Darryl Fox, Jeffrey T. Buley, J. Brendan Quinn, William D. Powers, Jason Powers, Kenneth Dippel, Mary Obwald, and Lisa Herbst Ruggles, each of

whom lived in or around Albany, New York, on November 1, 1996, the day before the 1996 general election.⁷ Although the Committee had been specifically told by RAD in 1994 about 11 C.F.R. § 104.3(b)(3)(i)(B), the Committee again reported the purpose of these apparent disbursements as for "election day expenses."

According to the Committee's response to the Commission's reason to believe findings, all of the money involved in 1994 and 1996 was used to cover the expenses of poll watchers on election day for "food, transportation, and in some cases, baby-sitting." Buley Affidavit at ¶¶13 and 19. Jeffrey Buley had assertedly concluded that "the best system for disbursing the funds to the volunteers was to have checks cut by [the Committee] to a number of individuals." Buley Affidavit at ¶13. The response contained the conclusory statement that "all disbursements that should have been reported were reported. All disbursements that were a part of this program that were greater than \$200 were reported by the Party, and the public and Commission received all the information required by the Act and the regulations." Joint Response at 11.

3. Analysis

As is noted above, the New York Republican Party's 1993 pollwatcher effort involved a number of checks made out to various groups and individuals, who apparently subsequently disbursed the funds. These facts are evidenced by the Party's bank records, which show the checks that were issued; by the Party's New York State disclosure reports, which show the amounts of these disbursements and the persons and organizations to whom they were made; and newspaper articles which describe the pollwatcher effort.

⁷ One minor difference with the check issued to Darryl Fox is that it was issued on October 31, 1996.

Respondents have asserted that the money described above and at issue with respect to 1994 and 1996 general election activity was also used for poll watcher programs. However, because of the method used with respect to the 1994 and 1996 disbursements, Respondents cannot support this statement and the true recipients of disbursements are not on the public record.

First, in both 1994 and 1996, checks were issued to individuals chosen that day to receive them because they happened to be present at the Committee's headquarters in Albany. These individuals either cashed the checks themselves while in the presence of Mr. Buley and immediately turned the cash over to Mr. Buley, or endorsed the checks over to Mr. Buley, who then cashed them. These individuals were then finished with their "involvement," and the money was then brought the 150 miles from Albany to New York City and turned over to Mr. Powers. Mr. Powers assertedly doled out the cash in various large sums to third parties whom he cannot identify, and who both Messrs. Powers and Buley understood were going to distribute their portions to yet other individuals whom they cannot identify. Still, the Committee has asserted that "[a]ll disbursements that were a part of th[ese] program[s] that were greater than \$200 were reported by the Party, and the public and Commission received all the information required by the Act and the regulations." However, this assertion does not square with the facts.

Mr. Powers himself testified that he gave out cash in amounts of a couple of hundred to a couple of thousand dollars. Even assuming that all of these cash recipients distributed their cash in amounts less than \$100, the disbursements made by Mr. Powers should have been made by check, rather than by cash. 2 U.S.C. § 432(h)(1).

In addition, Mr. Powers testified that he distributed cash to dozens of people, while Mr. Buley testified that this cash was intended to reimburse all 10,000 volunteers. Thus, it is

possible that a number of persons to whom Mr. Powers gave cash subsequently distributed cash in amounts over \$200 or \$100. If so, these instance would have required reporting and/or disbursements by check, which the Committee did not do. *Id.*

Again, it is instructive to compare the 1994 and 1996 activity to what occurred in 1993. In 1993, with election day on November 2, the Committee's State Account issued checks to organizations which were undertaking poll watching efforts, and the dates of these checks range from October 27-November 1. Nothing prevented the Committee in 1994 and 1996 from acting in a similar fashion with respect to getting out cash by issuing checks to persons who were subsequently going to distribute cash to poll watchers and reporting those checks. Indeed, this is what the Committee did with the checks issued to Luther Mook and the Kings County Republican Committee.

Regarding the use of multiple checks to draw cash from the bank, Mr. Buley, in response to the Commission's reason to believe findings, stated that he had concluded that "the best system for disbursing the funds to the volunteers was to have checks cut by [the Committee] to a number of individuals." Buley Affidavit at ¶13. This is a confusing statement, since the proceeds from the multiple checks were immediately returned to Mr. Buley, and then passed from Mr. Buley to Mr. Powers for later distribution.

Subsequently, at his deposition, Mr. Buley stated that the Committee issued multiple checks in both 1994 and 1996 at the suggestion of the banks involved in the respective transactions. Buley Deposition at 17-18, 37-38. According to Mr. Buley, the banks told him that this was the best way of getting large sums of money out of the Committee's account. *Id.*

Mr. Buley was further questioned regarding his contact with the banks. He could not recall to whom he had talked at either bank, either by name or by position, and he had no

documents memorializing these conversations. Mr. Buley was also unsure about when these conversations had taken place in relation to cutting the checks. He originally stated that these conversations would have occurred within two days of cutting the checks. When it was pointed out to him that election day was on a Tuesday and the checks were cashed on Monday, he revised his answer and stated that it could have been more than two days, that the conversations may have occurred on Fridays "or even" Thursdays. Buley Deposition at 18-19.

Neither of the banks which Mr. Buley claims to have consulted has corroborated his claim that he acted as he did because the banks told him to do so. In response to a Commission inquiry questioning such an arrangement, Key Bank responded that "[t]here is no bank policy indicating the above." Trustco Bank stated that "with respect to withdrawals of \$20,000 or more, Trustco Bank has no policy regarding the manner in which an account holder withdraws its money."

What appears to have occurred is that the Committee did not want to create a paper trail whereby the people to whom it disbursed these funds could be identified.⁸ The fund recipients listed in the Committee's reports were individuals whose only connection to the funds was that they cashed or endorsed checks. These same individuals were 150 miles away from where the funds were ultimately disbursed. Recipients of hundreds and thousands of dollars of the Committee's funds appear nowhere on the public record. Moreover, the failure to maintain records of who received the cash has resulted in an inability on the part of the Committee to correct its inaccurate reporting.

⁸ As opposed to, for example, Luther Mook and the Kings County Republican Committee, to whom the Committee issued individual checks, which were properly reported, albeit under the improper description of "election day expenses."

Despite the Committee's assertions, it cannot substantiate that the \$50,000 in 1994 and the \$22,500 in 1996 were used for a poll watcher program. While Messrs. Buley and Powers contended that the funds were used to reimburse pollwatchers, the Committee has provided absolutely no evidence to support these claims. No records of receipts or of amounts given to each person were maintained. Thus, there is no evidence to determine that the funds were used for operating expenses which should have been reported pursuant to 2 U.S.C. § 434(b)(5)(A) and 11 C.F.R. § 104.3(b)(3)(i); or as coordinated party expenditures which should have been reported pursuant to 2 U.S.C. § 434(b)(6)(B)(iv) and 11 C.F.R. § 104.3(b)(3)(viii); or whether, at the very least, the distributions of the funds should have been reported pursuant to 2 U.S.C. § 434(b)(6)(B)(v) and 11 C.F.R. § 104.3(b)(3)(ix), as disbursements not otherwise disclosed. It can only be said that the funds should have been properly reported pursuant to 2 U.S.C. § 434(b), and that this was not done.

Pursuant to 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b)(1), (2), the Committee was also under an obligation to keep an account of the name and address of every person to whom it made a disbursement, along with the date, amount, and purpose of the disbursement, including a receipt, invoice, or canceled check for each disbursement in excess of \$200. As noted above, neither Mr. Buley nor Mr. Powers can identify the persons to whom Mr. Powers distributed cash, and Mr. Powers testified that no records were kept of the individuals to whom he gave cash. Accordingly, it is clear that the Committee did not maintain records as it was required. Further, it is illegal to make disbursements in excess of \$100 by cash; all such disbursements must be made by check. William D. Powers and Jeffrey T. Buley clearly violated this section, and through their actions on behalf of the Committee, the Committee also violated it.

Nor do records exist of the persons to whom Messrs. Mook and Bramwell disbursed their cash. In addition, although Mr. Bramwell has stated that he did not give any individual \$100 or more, he has also stated that he bought food which was made and distributed on Election Day, that this was done for both coffee and donuts in the morning and fried chicken box lunches later in the day, and that at least 200 people were fed. The scope of such a project suggests that at some point cash was disbursed somewhere in excess of \$100. In so doing, Arthur Bramwell would have been acting on behalf of the Committee.

As noted above, a knowing and willful violation may be inferred "from the defendants' elaborate scheme for disguising" their actions and their "deliberate convey[ance of] information they knew to be false to the Federal Election Commission." Respondents' use of "straw" check recipients and their reporting of these individuals as the persons to whom the monies were disbursed appears to have been a deliberate falsification tactic to hide the disbursement of large sums of cash to other persons. Respondents' use of cash instead of checks and their failure to maintain records of recipients of the cash disbursements, should be seen as further evidence of knowing and willful violations.

Based on the above, there is probable cause to believe that the New York Republican Federal Campaign Committee and Michael Avella knowingly and willfully violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(b) by improperly reporting disbursements totaling \$82,500 on their 1994 and 1996 30-Day Post-General Reports; knowingly and willfully violated 2 U.S.C. § 434(b) and 11 C.F.R. § 104.3(b) by failing to report the full names and addresses of, and the proper amounts of disbursement to, recipients of disbursements of \$200 or more, in 1994 and 1996, for disbursements totaling at least \$72,500; knowingly and willfully violated 2 U.S.C. § 432(c)(5) and 11 C.F.R. § 102.9(b)(1), (2) by failing to keep an account of the name and

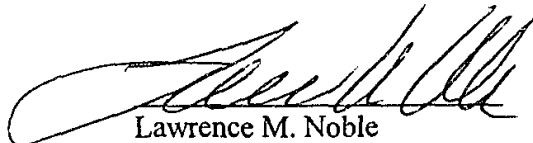
address of every person to whom it made disbursements, and failing to maintain records, including receipts, invoices, or canceled checks, for disbursements in excess of \$200 in 1994 and 1996, for disbursements totaling \$82,500; and knowingly and willfully violated 2 U.S.C. § 432(h)(1) by disbursing cash in amounts in excess of \$100 in 1994 and 1996. In addition, based on the above, there is also probable cause to believe that William D. Powers and Jeffrey T. Buley each knowingly and willfully violated 2 U.S.C. § 432(h)(1) by disbursing cash in excess of \$100 on behalf of the Committee.

III. GENERAL COUNSEL'S RECOMMENDATIONS

1. Find probable cause to believe that the New York Republican Federal Campaign Committee and Michael Avella, as treasurer, knowingly and willfully violated 2 U.S.C. §§ 432(c)(5), (h)(1) and 434(b) and 11 C.F.R. §§ 102.9(b)(1), (2) and 104.3(b); and that William D. Powers and Jeffrey T. Buley knowingly and willfully violated 2 U.S.C. § 432(h)(1).

Date

9/2/99



Lawrence M. Noble
General Counsel